

California Department of Toxic Substances Control Retail Waste Workgroup Meeting

Sacramento, CA

**Hazardous Waste (HW) Management and
Retail Sector**

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HW Management under RCRA

- Historical focus has been on industrial and manufacturing facilities. However, during the past several years, regulators have become increasingly involved with the retail sector (performing inspections, etc.).
- For the retail sector, EPA has estimated the number of hazardous waste generators and the breakdown among generator categories as follows:
 - Total number of facilities (1,686,487)
 - Number of facilities with RCRA generator status (41,138)
 - Number of LQGs (1,893 or 4.6%), SQGs (16,774 or 40.8 %); CESQGs (22,471 or 54.6%)
- The number of retailers with RCRA generator status may increase as additional retailers are identified.
- Inspections by regulators (EPA, state or local governments) have already identified compliance issues requiring attention and it is anticipated that these inspections will continue to occur in the future.
- As a result, EPA is taking a closer look at how retail wastes are managed under RCRA.

RCRA and the Retail Sector

Background

- EPA published a Notice of Data Availability (NODA) for the Retail Sector on February 14, 2014, to better understand stakeholder concerns/viewpoints regarding challenges the retail sector faces when complying with RCRA regulations.
- NODA requested comment on a series of topics related to retail operations, waste management practices, and challenges faced in properly managing materials (retail products) that may become hazardous wastes when discarded.
- A total of 44 comments were received from various stakeholders, including (as a few examples), retailers and industry/trade associations as well as governmental and related organizations.
- Comment period closed on May 30, 2014. EPA has completed review of all comments to identify stakeholder issues/concerns.

Analysis of NODA Comments

- Retail Sector Differs from the Industrial/Manufacturing Sector
 - Sheer number of stores generating hazardous waste (HW)
 - Numerous varieties of consumer goods/products handled and potential wastes/waste streams to manage
 - Unpredictable quantity of waste generation (episodic generation)
 - HW training at the store level difficult due to high employee turnover
 - HW determinations difficult (products handled by retailers are manufactured by someone else and ingredients are not always fully known)
 - Use of reverse distribution (RD) process to manage these products (including products that become hazardous waste when discarded)

Analysis of NODA Comments (continued)

- NODA Comments from all commenters (with approximate percentage of commenters):
 - Address Pharmaceuticals (42%)
 - Endorse RD Retail Paradigm – encompasses point of generation and waste determination issues (40%)
 - Manage Retail Products as Universal Waste (primarily focused on aerosol cans but also includes waste categories such as pesticides, electronics and/or pharmaceuticals) (35%)
 - Provide Flexibility for Episodic Generation/Hazardous Waste Quantity Determinations (14%)
 - Exclude Retail Products as Hazardous Waste – Household Hazardous Waste Exemption (10%)
 - Revise/Update Satellite Accumulation Area Requirements (9%)

Retail Strategy

- EPA is developing a retail program strategy that addresses concerns raised by retail NODA commenters and other stakeholders and identifies an approach for further study where needed.

EPA anticipates this strategy will be finalized in spring 2015

- Many of the actions that address concerns raised by retail NODA commenters are already underway, including:
 - Pharmaceuticals proposed rule
 - HW Generator Improvements proposed rule
 - Definition of Solid Waste Final Rule
 - Aerosol can guidance

Efforts Underway that Address Retail Concerns

- EPA's **proposed Pharmaceuticals Rule** (expected mid-2015), which is currently under review at OMB, would address retailers' concerns, particularly with nicotine-containing smoking cessation products (e.g., gums, lozenges and patches), and other low-concentration nicotine-containing products which are listed as hazardous wastes (P075). In addition, EPA plans to include a "request for comment" section in the preamble to acquire new toxicity data for nicotine to support two other potential regulatory options:
 - narrow exemption of FDA-approved over-the-counter smoking cessation products (patches, gums, and lozenges) from P075 listing
 - broader, concentration-based approach to listing nicotine (P-listing for high concentrations and U-listing for low concentrations similar to warfarin listing)
- EPA also plans to request comment in the rule preamble on whether e-cigarettes and nicotine-containing e-liquids for e-cigarettes should be included within the scope of the definition of pharmaceutical and therefore managed as other HW pharmaceuticals.
- EPA's **proposed HW Generator Improvement Rule** (expected mid-2015), which is currently under review at OMB, would also address generator status concerns. We expect that it will address: (1) episodic generation of hazardous waste (e.g., product recalls) without change in generator category and (2) consolidation of conditionally exempt small quantity generator HW at large quantity generators.

Efforts Underway that Address Retail Concerns (continued)

- EPA's final Definition of Solid Waste (DSW) Rule, **published on January 13, 2015**, provides a conditional exclusion for hazardous secondary materials, such as aerosol cans containing hazardous constituents (i.e., propellant and/or product). If these hazardous secondary materials are managed according to specified conditions, legitimately recycled, and sent to a verified recycler, they would not be regulated as hazardous waste.
<http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm>
- EPA plans to issue a guidance memo that explains how existing RCRA exclusions (including the DSW rule) would apply to recycling of aerosol cans.

Current Focus of EPA's Retail-related Efforts

- We want to learn more about hazardous waste management practices and related issues that affect the retail sector, which will enable us to make more informed policy decisions moving forward. To this end, we want to:
 - Better understand retail sector activities related to the RD process, including how HW determinations are made, the role of (and relationship among) the retailer, manufacturer/supplier, reverse logistics center (RLC) and others, as well as issues encountered to date by regulators when conducting inspections.
 - Better understand potential advantages or disadvantages associated with managing certain retail products (aerosol cans, electronics, etc.) as universal wastes.
 - Discuss any potential approaches to more effectively address the retail sector under RCRA, including the extent to which RD might play a role.

EPA's Recent Observations

- When and where hazardous waste determinations are made (i.e., at the store versus at an RLC) varies from retailer to retailer and from product to product – and may also vary with time.
- Certain big box retailers are using SDS-based UPC/SKU scanning systems to assist in making waste determinations at the store, however, small box stores and the even smaller (e.g., individually- or family-owned) stores may lack this capability and/or may not be fully aware of RCRA obligations.
- Retailers are using third parties to ensure proper management of products determined to be HW at store locations, although the extent to which this occurs across the retail sector is uncertain.
- RLCs (or similar facilities) also use an SDS-based UPC/SKU scanning system but it's uncertain the extent to which RLCs as a whole are taking this approach.
- Waste determinations typically occur at the RLC for some retail products when it's clear that these products have a possibility of being donated, liquidated or otherwise used/reused.

EPA's Recent Observations (continued)

- The role of RLCs in the RD process may offer benefits such as reducing the percentage of unsalable products and minimizing the percentage of products that become wastes.
- Certain non-prescription drugs (e.g., hand sanitizers, cold medicines, throat sprays) and vitamins are sent to RLCs where they end up being disposed as HW if, for example, the expiration date has passed.
- Based on experiences or other information (e.g., agreements between suppliers and retailers), retailers may know beforehand that certain retail products will ultimately be disposed as HW.
- Retailers may be returning to suppliers – to ensure receipt of manufacturer's credit for example – products that are subsequently disposed by the supplier as HW.
- The role played by suppliers in management of retail products under RCRA is an important consideration and an area for further study by EPA.

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